NOTES OF CASES.

Automobiles—Negligent Operation—Liability of Father for Injury to Guest of Son.—In Johnson *v.* Evans, 170 N. W. 220, 2 A. L. R. 891, decided by the Supreme Court of Minnesota, it appeared that the defendant owned and kept on his premises a five-passenger automobile for business purposes, and also for the comfort and pleasure of the members of his family, and his minor son was authorized and permitted to operate and use it for either purpose. While the son was so using the car, under the defendant's permission, his negligent and careless operation thereof caused injury to the plaintiff, who was riding therein as his guest. It was held that, though using the car for his own personal pleasure and that of his friends, the son was the servant of the defendant within the meaning of the law, and that the defendant was liable for his negligent misconduct in operating the same.

The court said: "The evidence offered by defendant shows that the son stated to defendant that he desired to take the car to go to Ada, and without inquiring as to the purpose of the trip or the imposition of restrictions upon the use of the car on the particular occasion, the request was granted. The purpose of the son was one of pleasure, and the car was devoted to that purpose until the accident happened. And since defendant interposed no restrictions or limitations upon the use of the car, it should not be said as a matter of law that there was a departure from the authority granted, merely because the pleasure drive took the son and party beyond the village of Ada. The record furnishes no suggestion that the permission to use the car would not have been granted had the son made full disclosure of his plans. In fact it affirmatively appears that express permission had previously been granted for a like use of the car, namely, that of attending dances in the neighborhood. It is not fair to assume that the request in this instance would have been denied had the dance at Borup or Hadler been mentioned to defendant. And since there was no departure from the purpose for which defendant kept the car, the question whether the son exceeded his authority to an extent to discharge defendant from responsibility was, at least, one of fact. The verdict to the effect that there was no such departure is supported by the evidence. The case, in point of substance, comes within the rule applied by the authorities generally. Ploetz *v.* Holt, 124 Minn. 169, 144 N. W. 745; Kayser *v.* Van Nest, 125 Minn. 277, 51 L. R. A. (N. S.) 970, 146 N. W. 1091; Jensen *v.* Fisher, 134 Minn. 366, 159 N. W. 827; McNeal *v.* McKain, 41 L. R. A. (N. S.) 775, and note, 33 Okla. 449, 126 Pac. 742; Denison *v.* McNorton, 142 C. C. A. 631, 228 Fed. 401; Griffin *v.* Russell, 144 Ga. 275, L. R. A. 1916F, 216, 87 S. E. 10, Ann. Cas. 1917D, 994. The important inquiry in this class of cases,

governed generally by the law of master and servant, is whether the son had express or implied authority to use the car on the particular occasion, and whether the use being made of it was within the general purpose for which it was kept by the parent. And by the weight of authority and reason the liability exists, where the car is kept for the pleasure and comfort of the family, though a single member thereof be using it for his own exclusive pleasure. Kayser *v.* Van Nest, 125 Minn. 277, 51 L. R. A. (N. S.) 970; 146 N. W. 1091; Birch *v.* Abercrombie, 74 Wash. 486, 50 L. R. A. (N. S.) 59, 133 Pac. 1020; Lewis *v.* Steele, 52 Mont. 300, 157 Pac. 575; Davis *v.* Littlefield, 97 S. C. 171, 81 S. E. 487; Griffin *v.* Russell, 144 Ga. 275, L. R. A. 1916F, 216, 87 S. E. 10, Ann. Cas. 1917D, 994. Such cases as Slater *v.* Advance Thresher Co., 97 Minn. 305, 5 L. R. A. (N. S.) 598, 107 N. W. 133, and Provo *v.* Conrad, 130 Minn. 412, 153 N. W. 753, are not in point. In those cases, there was an undisputed departure from the uses for which defendant therein kept the automobile. In the case at bar, there was no departure from such purposes at all; it was being used until the accident happened, for the pleasure of the defendant's son."

Federal Employers' Liability Act—Recovery by Employee as Barring Action by Personal Representative.—In Seaboard Air Line Railway Co. *v.* Oliver, 261 Fed. 1, the U. S. Circuit Court of Appeals for the Fifth Circuit held that under the employers' liability act of April 22, 1908, § 1 (Comp. St., § 8657), making railroad carriers liable to an injured employee, or in case of death to his personal representatives, and § 9, as amended by the act of April 5, 1910, § 2 (Comp. St., § 8665), providing that rights of action given to a person suffering injuries shall survive, and that in such case there shall be only one recovery for the same injury, the personal representative of an injured employee who recovered judgment for his injuries can not recover for his death.

The court said: "So far as we are advised, the question whether the statute mentioned gives a deceased employee's personal representative the right to maintain an action when the employee himself has recovered for the injury he suffered has not heretofore been ruled on. It is not open to question that the statute provides for two distinct rights of action: One in the injured person for his personal loss and suffering, where the injuries are not immediately fatal; and the other in his personal representative for the pecuniary loss sustained by designated relatives, where the injuries immediately or ultimately result in death, the damages recoverable in the one case not being the same as those recoverable in the other. Michigan Central R. R. *v.* Vreeland, 227 U. S. 59, 33 Sup. Ct. 192, 57 L. Ed. 417, Ann. Cas. 1914C, 176; St. Louis, etc., Iron Mountain Ry. *v.* Croft, 237 U. S. 648, 35 Sup. Ct. 704, 59 L. Ed. 1160.